

STATEMENT OF REP. JOHN CONYERS, JR.
Subcommittee on the Constitution
Hearing on "The Defense of Marriage Act"
Tuesday, March 30, 2004

As we begin today's hearings on the Defense of Marriage Act, we all know that the real question before this Committee is whether this Committee and this Congress will pass a constitutional amendment enshrining discrimination into the Constitution. Such a move is not only unnecessary, it is divisive and extreme.

The amendment is unnecessary because each state is free to reach its own policy determination on this issue. President Bush set off the alarm bells on this issue in February when he said there is a grave risk "that every state would be forced to recognize any relationship that judges in Boston ... choose to call a marriage." This statement is totally false.

Through out American history, disputes over marriage, divorce and adoption have all been dealt with on a state by state basis. Any legal scholar can tell you that no state has ever been mandated by the full faith and credit clause to recognize a marriage from another state that conflicted with that state's public policy.

The President's statement also completely misunderstands Massachusetts law, which specifically voids any marriage performed in that state if the couple is not eligible to be married in their home state. That means it will be impossible for out of state residents to use a Massachusetts same sex marriage to circumvent their own laws.

It is also inappropriate to argue that Congress has been forced into this position by virtue of "activist judges," as the president has done. Any one who has followed this debate realizes that the individuals in San Francisco, Portland, and New Paultz New York who have pressed this issue are elected officials, not judges. As a matter of fact, it is judges in California who have stopped the licenses from being issued. For the President to suggest otherwise, is not only disingenuous, its dishonest.

The amendment is divisive because it pits our citizens against each other concerning a matter that should properly be left to the states. The reason our founders developed our system of federalism is to permit the states to experiment on matters of policy such as this. We don't need a one size fits all rule which treats the citizens of San Francisco and New York in the same manner that people are treated in Grand Rapids. Doing so is more likely to inflame our citizens rather than placate them.

The amendment is constitutionally extreme because it would for the first time in our nation's history place intolerance into our constitution. We have had debates about civil rights in our nation before, many of them in our own generation. We have fought to end slavery, liberate women, safeguard religion, and protect the disabled. We have even survived a debate over interracial marriage. However, never before have we sought to legislate discrimination into our nation's most sacred charter as the Musgrave amendment would do.

If this Committee wants to engage in a debate concerning gay and lesbian rights, we ought to be passing a federal law which bans hate crimes, or protects these individuals against employment discrimination. We certainly shouldn't be spending our time on a divisive and toxic wedge issue deep in an election year.